

**ARKANSAS COURT OF APPEALS**

DIVISION III

No. CA08-578

DONNA GLASGOW

APPELLANT

V.

ARKANSAS DEP'T OF HUMAN  
SERVICES and I.R., Minor Child

APPELLEES

**Opinion Delivered** October 8, 2008

APPEAL FROM THE PERRY  
COUNTY CIRCUIT COURT,  
[JV 2007-2]

HONORABLE JOYCE WILLIAMS  
WARREN, JUDGE

AFFIRMED

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**WENDELL L. GRIFFEN, Judge**

Donna Glasgow appeals from an order terminating her parental rights with regard to her son, I.R., d.o.b. 11-22-01. She argues that the circuit court erred in finding that I.R. was adoptable as of the date of the termination hearing and that he would be potentially harmed by her drug abuse. Additionally, she argues that the evidence did not support a statutory ground for termination. As her arguments fail to persuade, we affirm the termination order.

Appellee Arkansas Department of Human Services took emergency custody of I.R. on January 15, 2007, after receiving a report that he had been abandoned by appellant. Appellant left I.R. at the home of a neighbor, Mrs. Peoples, who is the grandmother of I.R.'s half-sister. Appellant left I.R. in Mrs. Peoples's care on January 12, 2005, and stated that she would return in a couple of hours, but thereafter failed to return or to make contact with Mrs. Peoples.

Appellee's emergency custody was continued, and a probable-cause hearing was held on January 24, 2007. Appellant tested positive for drugs on that day. Appellant stipulated that she "was not around" when I.R. was taken into custody; that she tested positive for drugs on January 18, 2008; and that she would be expelled from the shelter in which she was living because she tested positive for drugs that day. Also, on that same day, the circuit court entered an order continuing appellee's custody of I.R.

Appellant was initially granted two hours' supervised visitation per week. Appellee was ordered to provide numerous services, including a drug and alcohol assessment referral, housing assistance, random drug screens, and transportation assistance. Appellant was ordered to cooperate with appellee and to comply with court orders and the case plan.

By order entered on March 20, 2007, I.R. was adjudicated as dependent-neglected. Specifically, the court found that appellant abandoned I.R., and further found that she had a drug problem and had no appropriate housing. The case plan required appellant to attend NA/AA meetings, and appellant was ultimately ordered to provide sign-in sheets from these meetings. In addition, the circuit court ordered appellant to participate in individual counseling, and to enter and complete inpatient drug treatment.

Appellant was also ordered to complete parenting classes and to demonstrate improved and appropriate parenting skills; to obtain and maintain stable housing and employment; to maintain a clean, safe, home; to demonstrate the ability to keep the child safe; and to attend all medical appointments when notified by appellee. The court also ordered appellee to immediately enroll I.R. in counseling and to pursue therapeutic foster care for the child.

Visitation continued as ordered. After appellant missed her initial drug and alcohol assessment, she was advised that visitation would be suspended if she missed her rescheduled appointment.

During the course of the case, the court found that appellant had “minimally and partially” complied with court orders and the case plan. Another time, the court noted that the case plan was “slowly, painfully, and excruciatingly” moving toward an appropriate permanency plan for I.R. It further noted that appellant was placed in one rehabilitation facility but that her placement ended prematurely due to her uncontrolled diabetes. Nonetheless, the court determined that appellant failed to attend NA/AA meetings and continued using illegal drugs, as proven by her positive drug screens; that she did not participate in individual therapy or receive a psychological evaluation; and that she did not demonstrate improved parenting skills, as she interacted little with I.R. during visitation. As a result, the court reduced visitation to one hour each week, and later, to one hour every other week, with each visit to be preceded by a drug screen.

The permanency planning hearing was held on November 9, 2007, after which the court changed the case goal to termination. At that point, the court found that I.R.’s needs were being met and that the therapeutic foster home was “dealing with his behaviors and problems.” Visitation continued at one hour per week, every other week.

The court found that appellant had “substantially complied only at the eleventh hour,” which it clarified to mean within the last three weeks. It determined that appellant had attended a staffing; attended counseling intake and one counseling session; and attended two

NA/AA sessions. She had also established an appropriate home and had passed all drug screens since October 17, 2007, except that she twice tested positive for opiates, for which she produced no prescription. Additionally, the court found that appellant had a psychological evaluation scheduled but had not completed inpatient drug treatment. It noted that one parenting class remained to be completed. The court further noted that appellant had not obtained regular employment. It continued its prior orders.

The court stated that appellant was “finally complying” with its orders. Nonetheless, it expressed “concerns re mom’s lack of insight about her contribution to [I.R.]’s problems because of her past choices & lifestyle,” and it “stressed to her the importance of counseling.” The court explained that it was not too late for appellant to avoid termination but warned that she must be in “total compliance” from then on.

The termination hearing was held on February 8, 2008, four months after the permanency planning order was entered. I.R. was then seven years old and had been in foster care for nearly thirteen months. The circuit court found that termination was in I.R.’s best interests, and that the grounds alleged in appellee’s petition to terminate had been proven by clear and convincing evidence.

The primary reason the court cited in ordering termination was appellant’s continued use of illegal drugs. It found:

[T]he mother is still using illegal drugs. That is not good. The mother is not in rehab, and causes have been given for that. However, she still has not provided proof of her attendance at NA/AA meetings as required. The court does note that the mother did enter a residential treatment facility. The mother testified that she left the program because of medical reasons but would return after the termination of parental rights hearing. The mother has had some drug screens, and there have been positive

drug screens since the last court hearing. The mother has not completed parenting classes. She has visited with the juvenile, and those visits have gone well. However, *the bottom line is that the mother is not a fit and proper parent for the juvenile. Mom talks about what she has and has not done and about what she plans to do. However, this juvenile needs permanency as soon as possible.*

*The Court finds that the mother's previous actions of leaving this child alone when he lived with her have caused him to have great distress and issues regarding sleep that are continuing to this day. This child is adoptable, as all children are.<sup>1</sup> The Court finds that there is a good likelihood of the juvenile being adopted. He is a child. He has issues, but the right parent is there for this child. His behavior and other factors must continue to be addressed appropriately so that he can be in a safe and permanent adoptive home. The Court finds that the mother would need at least 12 to 18 months for her to become sober, remain sober, and demonstrate an ability to actually provide safety, security, protection, and permanency for the juvenile. It is best for the juvenile to remain in DHS custody and for DHS to locate a fit and proper person or persons to be his parent or parents.*

This is a sad case, as the Court has no doubt that his mother loves her son. However, *she has so many personal issues she needs to work on to get herself in a position where she can live a responsible life of her own. Unfortunately, the juvenile cannot wait for the mother to get to that point in her life. Return of the juvenile is contrary to his welfare and best interests.*

(Emphasis added.)

### *I. Applicable Law*

An order terminating parental rights must be based on clear and convincing evidence. See *Lewis v. Arkansas Dep't of Human Servs.*, 364 Ark. 243, 217 S.W.3d 788 (2005). Clear and convincing evidence is that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the question that must be answered on

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<sup>1</sup>To the extent that the circuit court erred in stating that all children are adoptable, this error was cured because specific evidence concerning I.R. supports the court's finding that he, in particular, is adoptable.

appeal is whether the circuit court's finding that the disputed fact was proven by clear and convincing evidence was clearly erroneous. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.* Termination cases are reviewed *de novo* on appeal. *Id.* However, we give a high degree of deference to the circuit court, as it is in a far superior position to observe the parties before it and to judge the credibility of the witnesses. *Id.*

Appellant's parental rights were terminated pursuant to Ark. Code Ann. § 9-27-341(b)(3) (Repl. 2008), which states that an order terminating parental rights shall be based upon a finding by clear and convincing evidence (1) that termination is in the best interest of the juvenile after considering the likelihood of adoption, and the potential harm, specifically addressing the effect on the health and safety of the child, caused by continuing contact with the parent, and (2) that termination is founded based on one or more of the grounds for termination listed in § 9-27-341(b)(3)(B).

The additional ground asserted in this case upon which the court based termination appears to be that other factors arose subsequent to the dependency-neglect petition demonstrating that I.R.'s return to appellant's custody would be contrary to his health, safety, or welfare, and that appellant manifested the incapacity or indifference to remedy the subsequent factors or to rehabilitate her circumstances that prevented the return of I.R. to her custody. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a). We hold that the circuit court did not err in terminating appellant's parental rights, primarily due to her continued drug usage.

## *II. Adoptability*

Appellant first argues that the circuit court erred in finding, as part of its best interest determination, that I.R. is likely to be adopted. *See* Ark. Code Ann. § 9-27-341(b)(3). She argues that the court erred in finding that I.R. was adoptable “at this time” due to his behavioral issues.

Dianne Simmons had been I.R.’s foster mother for six months. She and Tina Rushing, one of I.R.’s therapists, explained that I.R. will be leaving the therapeutic foster home, due to his difficulty going to sleep and sleeping through the night, which has caused Simmons’s family (including her children) to become sleep-deprived. At bedtime, I.R. goes into “a rage” and does not want to go to bed. Once in bed, he may sleep for only two or three hours. According to Simmons, I.R. cannot sleep because he is scared, and that, in turn, is due to the fact that, when he lived with appellant, he would wake up to find appellant gone. I.R. told Simmons that when he awoke at night and found appellant gone, he would hide under his bed. He also complained of the “Boogeyman” visiting his room when he lived with his mother.

I.R. also had difficulty at school, such as lack of concentration, refusal to take a nap, and difficulty sitting still or following instructions. Although I.R. had been given different medications, none solved the problem. I.R. was due to have a sleep study performed the month after the termination hearing. Despite I.R.’s difficulties, both Simmons and Rushing felt that, once his sleeping problem is resolved, he will be adoptable.

Additionally, Melinda Schales, appellee’s adoption specialist, testified that I.R. is “very

adoptable” and that there is a “high likelihood” that he would be adopted due to his age. She admitted that she was only “vaguely aware” of I.R.’s behavioral problems. Nonetheless, the fact that I.R. was leaving his therapeutic foster home due to behavioral issues did not change her recommendation. Schales agreed that if a child acts out, has a sleep disorder, and has behavioral problems, he is not “as adoptable” as a child who does not have those problems. Regardless, she concluded that I.R. is “very adoptable.”

We hold that the circuit court did not err in finding that I.R. is adoptable. Despite appellant’s argument, the circuit court is not required to find the juvenile was adoptable as of the date of the termination hearing. Rather, the court is only required to consider the likelihood that the juvenile *will be* adopted, in making its best-interest determination. See Ark. Code Ann. § 9-27-341(b)(3).

Further, simply because I.R. was experiencing behavioral problems does not mean that he is not adoptable. If that were so, then only perfectly-behaved children would be adoptable. While appellant places much emphasis on the fact that I.R.’s placement in a therapeutic foster home was ending due to his behavioral problems, the evidence showed that placement was ending merely due to I.R.’s sleep disturbances. Significantly, I.R.’s sleep disturbances are the result of appellant leaving the younger-than-seven-year-old child alone at night. Appellant cannot create a behavioral problem for her child and then argue that the condition she created renders him unadoptable. See *McFarland v. Arkansas Dep’t of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005).

In any event, the adoption specialist, I.R.’s foster mother, and his therapist concluded

that, despite I.R.'s problems, he is adoptable. While the adoption specialist knew little of the nature or extent of I.R.'s behavioral problems, his foster mother and therapist were well-acquainted with them, and the circuit court justifiably relied on their testimony. In addition, the fact that I.R. was young, only seven years old, also weighs in favor of finding that he is adoptable.

*II. Potential Harm/Failure to  
Remedy Subsequent Conditions<sup>2</sup>*

Appellant further argues that the circuit court erred in determining, as part of its best-interest analysis, that I.R. would be potentially harmed by her drug usage if he is returned to her care. See Ark. Code Ann. § 9-27-341(b)(3)(A)(ii). Appellant's drug usage was a condition that was discovered after I.R. was removed from her custody. In short, the same evidence supporting that it is not in I.R.'s best interest to be returned to appellant due to the potential harm caused by her continued drug usage, also supports termination based on the additional statutory ground that appellant manifested the incapacity or indifference to remedy the subsequent issues or factors that arose after removal or that she failed to rehabilitate her circumstances that prevent I.R.'s return to her custody. See Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a).

Appellant does not dispute the evidence regarding her drug usage, the fact that she tested positive for illegal drugs numerous times during the pendency of this case, or that she

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<sup>2</sup>Appellant also argues that the trial court erred in finding that she failed to remedy the condition that caused removal – abandonment. However, the circuit court did not rely on appellant's abandonment of I.R. as a basis for termination.

failed to attend NA/AA meetings or provide sign-in sheets as ordered. She delayed in getting her initial drug assessment and did not attempt inpatient drug rehabilitation until December 2007. While it is uncontested that she lost her placement due to her uncontrolled diabetes, she admitted that her diabetes had been “uncontrolled” for twenty-five years. She claims that, but for the diabetes, she would have completed her treatment. Yet, just as with her drug usage, the management of her diabetes was a matter that was within her control, for which she failed to take responsibility. In any event, a parent’s continued use of illegal drugs is contrary to her child’s best interest. *See Carrol v. Arkansas Dep’t of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004).

Yet, appellant asserts that I.R. is not in danger from her drug usage because neither appellant nor I.R. is currently in a position to reunify. She further asserts that waiting a “reasonable time” for her and I.R. to “remedy their own problems would not cause additional harm to the child.” This assertion, first, is belied by the purpose of the juvenile code to provide permanency from a reasonable time, as viewed by the juvenile’s perspective. *See Ark. Code Ann. § 9-27-341(a)(3)*. Second, this assertion highlights appellant’s failure to recognize the role that she played in causing I.R.’s behavioral problems, as well as her failure to recognize the seriousness of the harm that she has inflicted on her child.

Appellant’s reasonable-time argument is also belied by the evidence in this case. The family service worker recommended termination due to appellant’s continued drug usage and I.R.’s need for a stable home. One of appellant’s therapists, Jeane Crume, concluded just three months before the termination hearing, that I.R. “will need intense and consistent

parenting to repair the trauma he has experienced in just the last year.” Accordingly, she recommended “that he continue in therapeutic foster care, with as few changes in his living arrangements as possible.”

The circuit court found that appellant would need at least twelve-to-eighteen months to become sober, remain sober, and to otherwise demonstrate her ability to provide for I.R.’s needs. This finding was justified by the facts in this case, given that appellant had not completed a residential rehabilitation program prior to the termination hearing, and given her demonstrated refusal to comply with the court’s orders designed to assist with her drug problem.

Notably, appellant does not challenge the finding that she required twelve-to-eighteen months to become stable. Instead, she offers excuses for her failure to stop using drugs. Appellant’s explanation for her delay in seeking treatment was that “it took her a while to fully recognize that she had a need for” drug rehabilitation, and that, during the November 2007 permanency planning hearing, “the drug haze that [she] had been living in was finally penetrated with the knowledge of what must be accomplished to retain her parental rights to I.R.” Notably, this realization thus did not occur until *eleven months* after I.R. had been placed in foster care.

The court made it clear that it was not too late at that point, but also made it clear that, from then on, it required “total compliance.” Yet, *after* appellant’s November epiphany, and even though her drug haze had allegedly been penetrated, appellant did not again attempt to gain placement in a residential rehab facility until *one week prior to the February 8, 2008*

*termination hearing*. She also tested positive for illegal drugs – cocaine and opiates – in the interim. Additionally, she failed to complete parenting classes, even though she only had one more to attend. Further, although appellant regularly exercised visitation, she never achieved unsupervised visitation. In fact, the court *reduced* appellant’s supervised visitation from two hours per week to one hour every other week, due to her noncompliance.

The family service worker confirmed that another rehabilitation facility would “most likely” have an opening the week following the termination hearing, but the circuit court properly concluded that proposed placement was too little, too late, to prevent termination. Overtures toward participating in the case plan or orders of the court following the permanency planning hearing and preceding the termination hearing do not preclude a finding that termination is warranted. *See* Ark. Code Ann. § 9-27-341(a)(4)(A). Moreover, to the extent that appellant complied with the case plan, her compliance nonetheless failed to make her capable of caring for I.R. *See Wright v. Arkansas Dep’t of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003).

Finally, appellant asserts that the real harm to I.R. would be the severance of the mother-son bond. The circuit court recognized that appellant loves her son, and unsurprisingly, I.R. expressed to his therapist that he misses appellant. Yet, it is simply not sufficient for appellant to argue that the parent-child bond should not be severed due to filial affection – that argument, if accepted, would almost always preclude termination. The court properly determined that I.R.’s overriding immediate need was permanency, which appellant cannot give him at this time. Thus, the circuit court here properly ordered that the parent-

child relationship in this case should be severed.

Affirmed.

HART and HUNT, JJ., agree.